UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN PUGLEY, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FULGENT GENETICS, INC., MING HSIEH, and PAUL KIM, Defendants.	Case No. CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS DEMAND FOR JURY TRIAL

Plaintiff John Pugley ("Plaintiff"), individually and on behalf of all others similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States

("U.S.") Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Fulgent Genetics, Inc. ("Fulgent" or the "Company"), analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Fulgent securities between March 22, 2019 and August 4, 2022, both dates inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Fulgent, together with its subsidiaries, provides COVID-19, molecular diagnostic, and genetic testing services to physicians and patients in the United States and internationally. As a result, Fulgent must comply with the federal Anti-Kickback Statute, which prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs, as well as the federal Stark Law, which prohibits a physician from making referrals for

certain designated health services, including laboratory services, that are covered by the Medicare program, to an entity with which the physician or an immediate family member has a direct or indirect financial relationship.

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Fulgent had been conducting medically unnecessary laboratory testing, engaging in improper billing practices in relation to laboratory testing, and providing or receiving remuneration in violation of the Anti-Kickback Statute and Stark Law; (ii) accordingly, Fulgent was likely to become subject to enhanced legal and regulatory scrutiny; (iii) Fulgent's revenues, to the extent they were derived from the foregoing unlawful conduct, were unsustainable; (iv) the foregoing, once revealed, was likely to subject the Company to significant financial and/or reputational harm; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times.

4. On August 4, 2022, Fulgent released its second quarter 2022 financial results, disclosing, among other items, that the SEC was conducting an investigation into certain of the Company's reports filed with the SEC from 2018 through the first quarter of 2020. The disclosure followed the Company's receipt of a civil investigative demand issued by the U.S. Department of Justice "related to its investigation of allegations of medically unnecessary laboratory testing, improper

billing for laboratory testing, and remuneration received or provided in violation of the Anti-Kickback Statute and the Stark Law."

5. On this news, Fulgent's stock price fell $11.02 per share, or 17.29%, over the following two trading sessions, to close at $52.72 per share on August 8, 2022.

6. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

9. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Fulgent is headquartered in this Judicial District, Defendants conduct business in this Judicial District, and a significant portion of Defendants' activities took place within this Judicial District.

10. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,

including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

11. Plaintiff, as set forth in the attached Certification, acquired Fulgent securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

12. Defendant Fulgent is a Delaware corporation with principal executive offices located at 4978 Santa Anita Avenue, Temple City, California 91780. Fulgent's common stock trades in an efficient market on the Nasdaq Global Market ("NASDAQ") under the trading symbol "FLGT".

13. Defendant Ming Hsieh ("Hsieh") has served as Fulgent's Chief Executive Officer at all relevant times.

14. Defendant Paul Kim ("Kim") has served as Fulgent's Chief Financial Officer at all relevant times.

15. Defendants Hsieh and Kim are sometimes referred to herein as the "Individual Defendants."

16. The Individual Defendants possessed the power and authority to control the contents of Fulgent's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Fulgent's SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or

to cause them to be corrected. Because of their positions with Fulgent, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

SUBSTANTIVE ALLEGATIONS

Background

17. Fulgent, together with its subsidiaries, provides COVID-19, molecular diagnostic, and genetic testing services to physicians and patients in the United States and internationally. As a result, Fulgent must comply with the federal Anti-Kickback Statute, which prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs, as well as the federal Stark Law, which prohibits a physician from making referrals for certain designated health services, including laboratory services, that are covered by the Medicare program, to an entity with which the physician or an immediate family member has a direct or indirect financial relationship.

Materially False and Misleading Statements Issued During the Class Period

18. The Class Period begins on March 22, 2019, when Fulgent filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and

operating results for the year ended December 31, 2018 (the "2018 10-K"). In providing an overview of the Company, the 2018 10-K stated, in relevant part:

> Fulgent is a growing technology company offering comprehensive genetic testing and providing physicians with clinically actionable diagnostic information they can use to improve the quality of patient care. We have developed a proprietary technology platform that allows us to offer a broad and flexible test menu and continually expand and improve our proprietary genetic reference library, while maintaining accessible pricing, high accuracy and competitive turnaround times. Combining next generation sequencing, or NGS, with our technology platform, we perform full-gene sequencing with deletion/duplication analysis in single-gene tests; pre-established, multi-gene, disease-specific panels; and customized panels that can be tailored to meet specific customer needs. We believe our test menu offers more genes for testing than our competitors in today's market, which enables us to provide expansive options for test customization and clinically actionable results. After launching our first commercial genetic tests in 2013, we have expanded our test menu to include approximately 18,000 single-gene tests and more than 900 panels that collectively test for approximately 7,600 genetic conditions, including various cancers, cardiovascular diseases, neurological disorders and pediatric conditions. A cornerstone of our business is our ability to provide expansive options and flexibility for all clients' unique genetic testing needs.
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> Genetic testing offers the possibility of early identification of a disease or a genetic predisposition to a disease and enhanced disease treatment and prognosis. As a result, we believe widespread genetic testing could enable significant health improvements and healthcare cost reductions by providing patients and clinicians with more advanced knowledge and options for personal health management plans. Due to these and other potential benefits, genetic testing has experienced significant growth in recent years. If this growth trend continues, we believe genetic testing will become part of standard medical care. The knowledge of a person's unique genetic makeup could then begin to play a more important role in the practice of medicine. We believe this growth has been tempered in prior years, however, because many tests are prohibitively expensive, are produced through inefficient processes and often do not result in clinically

actionable data. Through our technology platform, we have developed an offering that we believe addresses these industry challenges and provides a sustainable competitive advantage, both in today's genetic testing market and as we seek to implement new diagnostic tools in the future.

Our technology platform, which integrates sophisticated data comparison and suppression algorithms, adaptive learning software, advanced genetic diagnostics tools and integrated laboratory processes, allows us to offer a test menu with expansive genetic coverage. We believe the comprehensive data output and high detection rates of our tests, both made possible by this expansive genetic coverage, provide physicians with information they can readily incorporate into treatment decisions for their patients, which we refer to as clinical actionability. In addition, our technology platform facilitates our ability to perform customized genetic tests using our expansive library of genes, and we believe this flexibility increases the utility of the genetic data we produce. Further, our technology platform provides us with operating efficiencies that help lower our internal costs, which allows us to offer our tests at accessible price points. As a result, our efforts to build and continually enhance our technology platform allow us to deliver comprehensive, adaptable, clinically actionable and affordable genetic analysis while maintaining a low cost per billable test, enabling us to efficiently meet the needs of our growing base of customers. These features of our offering have resulted in rapid volume growth since our commercial launch, with 22,298 billable tests delivered in 2018, 16,578 billable tests delivered in 2017, and an aggregate of over 59,201 billable tests delivered to approximately 980 customers from inception through December 31, 2018.

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Low Internal Cost per Billable Test

We have developed various proprietary technologies that improve our laboratory efficiency and reduce the costs we incur to perform our tests. This technology platform enables us to perform each test and deliver its results at a lower internal cost than many of our competitors, averaging approximately $480 per billable test delivered in 2018. This low cost per billable test allows us to maintain affordable pricing for our customers, averaging approximately $958 per billable

> test delivered in 2018, which we believe encourages repeat ordering from existing customers and attracts new customers. We believe our low cost per billable test could also facilitate the process for establishing coverage and reimbursement from third-party payors at a level adequate for us to achieve profitability with this payor group.

19. Appended to the 2018 10-K as an exhibit was a signed certification pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by the Individual Defendants, attesting that "[t]he information contained in the [2018 10-K] fairly presents, in all material respects, the financial condition and result of operations of the Company."

20. On May 7, 2019, Fulgent issued a press release announcing the Company's Q1 2019 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a good start to the year with billable tests growing 63% year-over-year, reaching a new quarterly high. Our business mix continues to diversify, and we have continued to invest in our infrastructure in anticipation of accelerating test volume in the coming quarters."
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> Paul Kim, Chief Financial Officer, said, "We are pleased with our growth this quarter, but at the same time we made investments in our operations which impacted our gross and operating margins. Despite these investments, we generated approximately $1 million in cash flow from operations. Looking at our pipeline of opportunities, we expect to see further growth throughout the year, and I believe we are well positioned to build on our momentum."

21. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q1 2019 results (the "Q1 2019 Earnings Call"). During the scripted portion of the Q1 2019 Earnings Call, Defendant Hsieh stated, in relevant part:

> We had a good start to the year and it demonstrates a solid year-over-year growth in revenue and the test volume. Revenue grew 15% year-over-year to $5.4 million. We saw strong growth in billable test volume, which increased 63% year-over-year to a new record high of almost 7,500. Our ASP was $713, down 19% compared to the fourth quarter of 2018 due to product mix.
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> We have begun to see scale with growth test volume and we expect to continue over the course of the year. We are confident our ability to surpass 10,000 tests in the second quarter as we build on our momentum in the area I have discussed.

22. On August 5, 2019, Fulgent issued a press release announcing the Company's Q2 2019 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a very strong second quarter and achieved record quarterly results for revenue, billable test volume and cost per test. The momentum we are seeing is due to sustained strength across our business, including traction in the reproductive health and oncology markets, as well as growth in our sequencing as a service business. We also continue to expand our customer reach with partnership agreements, such as our collaboration with the Parkinson's Foundation announced last month. We believe this recent success is a testament to our differentiated technology capabilities that enable us to develop and deliver unique genetic testing solutions to a diverse customer base."
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> Paul Kim, Chief Financial Officer, said, "We exceeded our guidance and expectations in the second quarter and are very pleased with our results. The investments we have made in our business are delivering tangible returns, evidenced by the strong growth in revenue and billable test volume that we demonstrated in the second quarter. At the same time, our gross margin improved sequentially and year-over-year as we are seeing the benefits of scale. We remain optimistic about our growth potential in the quarters ahead, and as such, we are raising our revenue outlook for the year."

23. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q2 2019 results (the "Q2 2019 Earnings Call"). During the scripted portion of the Q2 2019 Earnings Call, Defendant Hsieh stated, in relevant part:

> We had a second quarter easily achieving quarterly results for both test volume and the revenue. At the same time, we found equal and equal margin and achieved a record cost per sale which should lead to very good and GAAP profitability in the quarter.
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> Essentially revenue grew 56% year-over-year to $8.4 million. Billable test increased 187% year-over-year for new record high of 16,369 far exceeding the [indiscernible] of last quarter for at least 10,000 tests. With the strong warning, we have now reported more tests in the first half of 2019 than we created in all of 2018.
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> Adjusted EBITDA was positive $1.5 million in the second quarter. The strong growth was demonstrated in the second quarter, were achieved of ongoing traction we're having in the breadth of our offerings across our volume customer base. And with our collaboration agreement, the majority of growth in a test volume that we saw this quarter was driven by demand from our core clinical business increasing level of momentum with our core test. Well, our reproductive health and service for sequencing and research data analyzed continues to work. The large warning tests were able to essentially in the quarter, demonstrate how our investments in technology capabilities and infrastructure kind of set us up for future success. In addition to the strong one for the opportunity in this quarter, we are pleased with the leverage we saw in our business, which resulted in that capacity. We saw a meaningful improved margin result from our input costs per test which benefited from scale, automation and efficiency with writing wall. Our comp protest is good from start with the conversation was a record low of $200,011.

24. On November 4, 2019, Fulgent issued a press release announcing the Company's Q3 2019 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "We continued to build on our momentum in the third quarter and once again posted very strong results. Revenue and billable test volume reached new record highs in the third quarter, while cost per test continued to improve. Our strong top line results have been driven by the growing traction with our oncology and reproductive health businesses, as well as our sequencing-as-service offering. Our established strategic investments and partnerships are contributing to our ongoing momentum, and we have been successful in meeting the growing demand from our new commercial genomic customers. We believe our superior test capabilities, extensive and flexible test menu, along with our competitive pricing will continue to drive strong growth across our business."

25. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q3 2019 results (the "Q3 2019 Earnings Call"). During the scripted portion of the Q3 2019 Earnings Call, Defendant Hsieh stated, in relevant part:

> The third quarter was another very strong quarter for us. We once again achieved a record quarterly results for both test volume and the revenue, while driving ongoing improvements in gross margin and the cost per test. We once again achieved the GAAP profitability and a generally strong cash flow, specifically, the revenue growth 84% year-over-year to a record $10.3 million.
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> Billable tests increased 272% year-over-year to a new record high of 20,697. Our ASP was $500 essentially flat compared to the second quarter of 2019. While our cost per test continue to improve, further increased our gross margin, excluding stock-based compensation costs per test improved to a record low of $179 per test.
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> We are confident that with the cost among the lowest in the industry, we have flexibility and the capability to drive a wider market. Aside from this financial advantage, our technology platform provides an even greater edge from the competitive and market position standpoint.

> Years of experience in our traditional core areas of pediatric, rare disease has provided the expertise to the inquiry and the interpretation as well as help to establish scientific findings, which a treatment guideline for a certain disease. An example of this is the work we have done with the Parkinson Foundation which is leveraging our data and expertise to develop a more efficient the treatment solutions for the disease.
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> In addition, our software [Indiscernible] from our engineers has not only provided a proprietary approach, but also our ability to develop and to introduce quality test with each -- with a minimal financial investment. This enables us to both introduce the test into the market quickly, where we see a need or opportunity and to maintain to one of the largest libraries of existing tests with no additional overheads.
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> Overall, we have the opportunity to have success driving top line growth and expanding our test offerings with legal incremental overhead. We remain disciplined in our approach to spending, and continue to see investments we have made paying off in growth.

26. On March 10, 2020, Fulgent issued a press release announcing the Company's Q4 and full year 2019 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a strong finish to the year, which was highlighted by revenue growth of more than 50% and billable test volume growth of more than 160%, year over year. We saw continued traction with our core oncology and reproductive health businesses in the quarter, while we continued to expand and diversify our customer base in both the clinical and research markets. As we look ahead, we remain focused on driving growth in our core test markets utilizing our technology platform while expanding our reach through partnerships and licensing agreements. We also see incremental opportunity to grow our international business, where we are in the early stages of expanding our sales organization. We look forward to providing updates on these initiatives in the year ahead."

27. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q4 2019 results (the "Q4 2019 Earnings Call"). During the scripted portion of the Q4 2019 Earnings Call, Defendant Hsieh stated, in relevant part:

> We finished the year with a good fourth quarter as revenue for the full year within our most recent guidance range. I'm very pleased that we achieved organic growth over of more than 50% for the year, and [indiscernible] more than 160% year-over-year. At the same time, we saw strong bottom-line and generated approximately $5 million in adjusted EBITDA for the year along with positive operating cash flow. So specifically, regarding the fourth quarter, revenue grew 48% year-over-year to $8.4 million. Billable test increased 118% year-over-year to 13,977. Our ASP was $600, an increase of 20% compared to the third quarter of 2019, benefit from the shift of mix of our tests of running to hire ASP tests. At the same time, our cost per test increased modestly in the quarter, primarily due to both shift in mix of tests, as well as reduced the benefit from economies of scale as our test volumes in the fourth quarter declined from the regular volume we saw in Q3.
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> First, in our traditional clinical business, we continue to see good demand for pediatric rare disease, reproductive health and expanded panels. Our traditional clinical business remains a significant contributor to our business, representing approximately half of our revenue this year with a brilliant portion coming from oncology and reproductive health rather than rare disease. Moving forward, we anticipate additional growth from tests related to whereas other conditions such as cardiovascular, Parkinson's and other diseases.

28. On March 13, 2020, Fulgent filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2019 (the "2019 10-K"). The 2019 10-K contained substantively

similar descriptions of the Company and its billing practices as discussed, *supra*, in ¶ 18.

29. Appended to the 2019 10-K as an exhibit was a signed certification pursuant to SOX by the Individual Defendants, attesting that "[t]he information contained in the [2019 10-K] fairly presents, in all material respects, the financial condition and result of operations of the Company."

30. On May 4, 2020, Fulgent issued a press release announcing the Company's Q1 2020 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a very good start to the year, which was impacted by the global proliferation of the novel coronavirus, or COVID-19, that materialized in the first quarter. While volume from our core rare disease, oncology and reproductive health businesses has been challenged in this unprecedented macro environment, particularly in March, we were pleased to deliver strong year over year growth in both revenue and billable test volume in the first quarter.["]

31. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q1 2020 results (the "Q1 2020 Earnings Call"). During the scripted portion of the Q1 2020 Earnings Call, Defendant Hsieh stated, in relevant part:

> Revenue was in line with our expectations for the first quarter growing 44% year-over-year to $7.8 million. Billable test increased 75% year-over-year to 13,163. Our ASP was a 589 essentially flat with what we saw in Q4. While cost per test increased 18% from Q4.
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> Non-GAAP gross margins in the first quarter was 51% up approximately 300 basis points from the first quarter last year and down approximately 8 percentage points sequentially. This sequential decline

> in gross margin was due to both test mix along with investment and expenses related to rollout of our COVID-19 tests. Adjusted EBITDA loss was $506,000 in the first quarter.

32. On August 4, 2020, Fulgent issued a press release announcing the Company's Q2 2020 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "The global COVID-19 pandemic has tested who we are as a company, and now more than ever we have demonstrated that Fulgent is a technology company with a proprietary platform built for massive scale. Our technology is the cornerstone for all facets of our business, including cloud computing, pipeline services, record management, web portal services, clinical workflow, sequencing as a service and automated lab services. Our second quarter results illustrate how we quickly applied our technology to the needs of today, organically developing and launching multiple tests to detect COVID-19 with Emergency Use Authorization from the FDA, including an at-home test offered through Picture Genetics, our patient-initiated product. These offerings have attracted major new customer accounts, resulting in an inflection point in our business and outlook."
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> Paul Kim, Chief Financial Officer, said, "Our second quarter volume increased over 1200% sequentially, and we see the opportunity for continued momentum through the balance of the year. Our traditional genetic testing orders rebounded in June and July and are on track for growth in the second half of 2020. By aggressively applying our technology platform, we democratized and made affordable the needs of COVID-19 testing to the public, resulting in overall average selling price of less than $100 per test, while shortening our average turnaround time to less than 24 hours from receipt of sample. We expanded our customer base for the long term by winning large, strategic governmental and commercial accounts. We will provide a formal update on our guidance for the remainder of the year during our investment community conference call to shortly follow the issuance of this press release."

33. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q2 2020 results (the "Q2 2020 Earnings Call").

During the scripted portion of the Q2 2020 Earnings Call, Defendant Hsieh stated, in relevant part:

> Our second quarter reported test volume increased approximately 1300% or 13 fold from our first quarter and we anticipate continued accelerated growth for the second half of the year which Paul will go over in detail on our guidance.
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> On our last call, we commented that, our traditional genetic testing business might be down approximately 25% to 30% in Q2. However, given the incremental business we saw on signing additional strategic customers in the quarter and a record rebound from our existing customers during the month of June, volumes ordered from our core business in Q2 was flat with what we saw in Q1 even with the uncertain regarding lockdowns throughout the various industries, our traditional businesses continue to gain momentum in July and we anticipate healthy growth in the second half of 2020.

34. On November 9, 2020, Fulgent issued a press release announcing the Company's Q3 2020 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "I am very pleased with our outstanding third quarter results, which demonstrate the true scalability of our technology platform for genetic testing. As the COVID-19 pandemic continues to threaten both our health and our way of life, we have been relentless in scaling our testing capabilities to offer fast, accurate and reliable COVID-19 testing solutions for commercial organizations, municipalities, universities and individuals across the country. Our recent momentum is a result of the investments we have made in our business and technology platform over many years. We expect to continue investing in our platform to expand our capabilities as we look to capture share in the broader genetic testing market in the future. In addition to our technology investments, we believe the relationships we have built during this pandemic from both a customer and reimbursement standpoint, along with the expansion of our commercial capabilities which includes our at-home platform, Picture Genetics, will help drive our business in the years ahead."

35. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q3 2020 results (the "Q3 2020 Earnings Call"). During the scripted portion of the Q3 2020 Earnings Call, Defendant Hsieh stated, in relevant part:

> With a modest level of investment in the infrastructure and higher comp, we're able to grow our test volume almost 50 times or 5,000% over that in the third quarter of last year and by more than five-tenths or 500% over that in the second quarter of this year.
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> At the same time, our gross margin improved by 19 percentage points sequentially with the operating expense only roughly doubling on a GAAP basis, which translates into operating income of $63.5 million and the record adjusted EBITDA of $67.4 million. This growth and profitability were made possible by the efficiencies we have created across our business from our live observation and our information management and the reporting system to have our own property biochemistry and the reagents.
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> Through our enhanced reimbursement capabilities and our system will have covered a significant amount of the ground and signing a number of substantial agreements, securing large volume of tests in the quarter ahead.

36. On March 4, 2021, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q4 2020 results (the "Q4 2020 Earnings Call"). During the scripted portion of the Q4 2020 Earnings Call, Defendant Hsieh stated, in relevant part:

> Our results in the fourth quarter were truly outstanding. Our fourth quarter revenue of $295 million is almost 3 times the revenue we generated in the third quarter of this year and more than 35 times our fourth quarter revenue of last year. We did more than 3 million tests in the quarter and over 4.4 million tests in the year compared to about 60,000 tests in all of 2019.

> At the same time, we demonstrate incredible leverage and generated more than $6 per share in non-GAAP income in the fourth quarter and more than $9 per share in non-GAAP income in the full year and $105.5 million in free cash flow. Paul will cover financial details, but I want to emphasize that this leveraged scale will not have been possible without our fundamental genetic testing technology, our proprietary lab operations and reporting system, our ability to rapidly secure multiple reimbursement agreements and the execution capabilities of our sales and the lab team.

37. On March 8, 2021, Fulgent filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2020 (the "2020 10-K"). The 2020 10-K contained substantively similar descriptions of the Company and its billing practices as discussed, *supra*, in ¶ 18.

38. Appended to the 2020 10-K as an exhibit was a signed certification pursuant to SOX by the Individual Defendants, attesting that "[t]he information contained in the [2020 10-K] fairly presents, in all material respects, the financial condition and result of operations of the Company."

39. On May 6, 2021, Fulgent issued a press release announcing the Company's Q1 2021 financial results. The press release stated, in relevant part:

> Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a very strong start to the year which resulted in record first quarter results. We continued to see strong demand for our RT-PCR based tests for COVID-19, while our NGS test volumes both for COVID and non-COVID testing ramped nicely in the quarter. We were particularly pleased in the first quarter to announce a contract win from the Center for Disease Control ("CDC") for our NGS testing for COVID-19. We look forward to supporting the CDC in their ongoing study of variants of the SARS-CoV-2 virus and national surveillance. We are also

> excited to welcome Dr. Larry Weiss to Fulgent to help expand our presence in molecular diagnostics. We believe that with his expertise in molecular science and pathology, and our scalable technology platform, we can grow into exciting new areas of oncologic testing efficiently. We remain confident in our ability to continue driving momentum in our NGS business as RT-PCR testing begins to scale back with the vaccine rollout."

40. That same day, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q1 2021 results (the "Q1 2021 Earnings Call"). During the scripted portion of the Q1 2021 Earnings Call, Defendant Hsieh stated, in relevant part:

> I will elaborate on these areas of the focus in a moment, but we'll first touch on the highlights from the first quarter. We had a record quarter start for the year with Q1 revenue totaling $359 million, more than 46x of the revenue in Q1 last year and the increase of almost 22% compared to the first quarter. We delivered approximately 3.8 million tests in the quarter, and increased roughly 19% compared to first quarter and almost 290x the volume of the Q1 last year.
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> We have built a genetic testing business on a strong technology foundation and that is scalable into new areas with minimum overhead and investment, and we believe this positions us extremely well for substantial growth and allow us to become a leader in the very broad genomic diagnostic market.

41. On August 9, 2021, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q2 2021 results (the "Q2 2021 Earnings Call"). During the scripted portion of the Q2 2021 Earnings Call, Defendant Kim stated, in relevant part, "[t]he revenue in the second quarter totaled $154 million, an increase of 790% compared to the second quarter of 2020. Billable tests in the quarter totaled

almost 1.6 million growing almost 9 times the volume of Q2 last year. While the majority of this revenue was related to the COVID-19 in our core business, our core revenue which we previously called NGS revenue was up 296% year-over-year and 54%."

42. On November 9, 2021, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q3 2021 results (the "Q3 2021 Earnings Call"). During the scripted portion of the Q3 2021 Earnings Call, Defendant Hsieh stated, in relevant part, "[t]ake a look at our third quarter results: Revenue total of $228 million, 124% compared to third quarter of 2020 and up of 48% sequentially. We delivered approximately 2.2 million tests in the quarter, more than doubled the volume of our third quarter last year."

43. On February 23, 2022, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q4 2021 results (the "Q4 2021 Earnings Call"). During the scripted portion of the Q4 2021 Earnings Call, Defendant Hsieh stated, in relevant part:

> Take a look at our fourth quarter results, which exceeded our guidance in both core and COVID revenue. Revenue totaled at $252 million, compared $295 million in the fourth quarter last year, and up 10% compared to third quarter in 2021. We delivered approximately 2.5 million tests in the quarter, up 13% compared third quarter 2021 and through down – and though down from 3.2 million in the fourth quarter last year.
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> Our strategy to expand and grow our core business is playing off nicely as the access with our organizations all performed well. We believe there is a meaningful opportunity to expand into different area in genomic testing and to build a partnership that establish our as go-to one-stop-shop for genomic testing needs for the future strategy -- strategic move.

44. On February 28, 2022, Fulgent filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2021 (the "2021 10-K"). The 2021 10-K contained substantively similar descriptions of the Company and its billing practices as discussed, *supra*, in ¶ 18.

45. Appended to the 2021 10-K as an exhibit was a signed certification pursuant to SOX by the Individual Defendants, attesting that "[t]he information contained in the [2021 10-K] fairly presents, in all material respects, the financial condition and result of operations of the Company."

46. On May 3, 2022, Fulgent hosted an earnings call with investors and analysts to discuss the Company's Q1 2022 results (the "Q1 2022 Earnings Call"). During the scripted portion of the Q1 2022 Earnings Call, Defendant Hsieh stated, in relevant part:

> Taking a look at our first quarter results, which again exceeded our guidance for both core and COVID revenue. Revenue totaled at $320 million, down 11% versus $359 million in the first quarter last year and up 27% compared to fourth quarter of 2021. We've delivered approximately 3.2 million tests in the quarter, up about 31% compared to the fourth quarter of 2021. Though down from 3.8 million in the fourth quarter of last year.

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> We look forward to scaling on capabilities that cause cancer testing to our west coast customer base. Dr. Weiss, who has been always seen the integration of CSI, into Fulgent, we are also oversee the operation of this lab. These announcements, notable steps forward in our strategy to drive long-term sustainable growth in our core genetic testing business. A key element of success of this strategy is a team of experienced leaders, within Fulgent who are executing on this vision every day, we helped build a relatively lean, but extremely knowledgeable group of executives, and [indiscernible], who have become instrumental to our success for execution.

47. The statements referenced in ¶¶ 18-46 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Fulgent had been conducting medically unnecessary laboratory testing, engaging in improper billing practices in relation to laboratory testing, and providing or receiving remuneration in violation of the Anti-Kickback Statute and Stark Law; (ii) accordingly, Fulgent was likely to become subject to enhanced legal and regulatory scrutiny; (iii) Fulgent's revenues, to the extent they were derived from the foregoing unlawful conduct, were unsustainable; (iv) the foregoing, once revealed, was likely to subject the Company to significant financial and/or reputational harm; and (v) as a result, the Company's public statements were materially false and misleading at all relevant times.

The Truth Emerges

48. On August 4, 2022, post-market, Fulgent released its second quarter 2022 financial results, disclosing, among other items, that the SEC is conducting an investigation into certain reports for 2018 through the first quarter of 2020. Specifically, the Company advised, in relevant part:

> The Company has received a Civil Investigative Demand, or CID, issued by the U.S. Department of Justice pursuant to the False Claims Act related to its investigation of allegations of medically unnecessary laboratory testing, improper billing for laboratory testing, and remuneration received or provided in violation of the Anti-Kickback Statute and the Stark Law. This CID requests information and records relating to certain of the Company's customers named in the CID, which represent a small portion of the Company's revenues. The Company is fully cooperating with the U.S. Department of Justice to promptly respond to the requests for information in this CID, and does not presently expect this CID or resulting investigation to have a material adverse impact. However, the Company cannot predict when the investigation will be resolved, the outcome of the investigation or its potential impact, which may ultimately be greater than the Company currently expects.

49. On this news, Fulgent's stock price fell $11.02 per share, or 17.29%, over the following two trading sessions, to close at $52.72 per share on August 8, 2022.

50. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Fulgent securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

52. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Fulgent securities were actively traded on the NASDAQ exchange. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Fulgent or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

53. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

54. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

55. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Fulgent;
- whether the Individual Defendants caused Fulgent to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Fulgent securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

56. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members

may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

57. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Fulgent securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ exchange and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Fulgent securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

58. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

59. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*

of the State of Utah v. United States, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

60. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

61. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

62. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and

maintain the market price of Fulgent securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Fulgent securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

63. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Fulgent securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Fulgent's finances and business prospects.

64. By virtue of their positions at Fulgent, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each

Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

65. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Fulgent, the Individual Defendants had knowledge of the details of Fulgent's internal affairs.

66. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Fulgent. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Fulgent's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Fulgent securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Fulgent's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Fulgent securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

67. During the Class Period, Fulgent securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Fulgent securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Fulgent securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Fulgent securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

68. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

69. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)

70. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

71. During the Class Period, the Individual Defendants participated in the operation and management of Fulgent, and conducted and participated, directly and indirectly, in the conduct of Fulgent's business affairs. Because of their senior positions, they knew the adverse non-public information about Fulgent's misstatement of income and expenses and false financial statements.

72. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Fulgent's financial condition and results of operations, and to correct promptly any public statements issued by Fulgent which had become materially false or misleading.

73. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Fulgent disseminated in the marketplace during the Class Period concerning Fulgent's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Fulgent to engage in the wrongful acts complained of herein. The

Individual Defendants, therefore, were "controlling persons" of Fulgent within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Fulgent securities.

74. Each of the Individual Defendants, therefore, acted as a controlling person of Fulgent. By reason of their senior management positions and/or being directors of Fulgent, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Fulgent to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Fulgent and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

75. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Fulgent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: September 20, 2022